IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. Nos.22226 and 20998 of 2004 and
W.P.M.P. Nos.26922 and 25277 of 2004

A. Shahul Hameed — Petitioner in both W.Ps.

Vs.

1. The Special Commissioner & Commissioner
for Revenue Administration
Ezhilagam
Chepauk, Chennai - 600 005 — 1st respondent in WP No.20998 of 04

2. The District Revenue Officer
Collectorate
Coimbatore — 2nd respondent in WP No.20998 of 04
&
sole respondent in WP No.22226 of 04

Prayer in W.P. No.22226 of 2004

Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the Charge Memo issued by the respondent in his Proceedings No.Na.Ka.13173/2004/A3 dated 29.03.2004 and to quash the same and direct the respondent to drop all further actions on the 17(b) disciplinary proceedings taken against the petitioner with all consequential monetary and service benefits.

Prayer in W.P. No. 20998 of 2004

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the Charge Memo issued by the first respondent in his Proceedings No.Service 2(1)/15641/2003 dated 26.05.2004 and to quash the same and direct the respondents to drop all further actions on the 17(b) disciplinary proceedings taken against the petitioner with all consequential monetary and service benefits.

For petitioner in both the W.Ps. — Mr. M. Muthupandian

For respondents in both the W.Ps. — Mr. Edwin Prabakar
Government Advocate (Writs)

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C O M M O N O R D E R

In W.P. No.22226 of 2004, the petitioner has sought to quash the impugned Charge Memo dated 29.03.2004 passed by the District Revenue Officer, Collectorate, Coimbatore and in W.P. No.20998 of 2004, the impugned Charge Memo dated 26.05.2004 passed by the first respondent is under challenge.

2. Since the petitioner and the subject matter in both the writ petitions are one and the same, these petitions are decided by a common judgment.

3. The petitioner, who is working as an Assistant in Taluk Office, Tiruppur, entered his service as Junior Assistant on 02.01.1982 and was promoted to the post of Assistant on 20.09.1984. While so, he was issued with Charge Memo dated 29.03.2004 impugned in W.P. No.22226 of 2004 on the ground that he had appointed two contingent staff members, namely Rajendran and Anandan as Office Assistants on 16.08.1995 and 17.06.1995 respectively and with yet another Charge Memo dated 26.05.2004 impugned in W.P. No.20998 of 2004 on the ground that he had appointed one contingent staff by name P. Thangavelu contrary to G.O.Ms.No.666, Finance Department dated 24.08.1992.

4. According to the petitioner, the above three contingent staff were appointed as Office Assistant by the then Sub-Collector, Pollachi and thus, formulating charge Charge Memos against him alone and not questioning the officer concerned is violative of Articles 14 and 16 of the Constitution of India. It is the case of the petitioner that he is only an Assistant and the Office Notes regarding the appointment of the said three persons as Office Assistants was dictated by the then Sub-Collector, verified by his P.A. and approved by the Sub-Collector himself and as such, he does not have any say in the matter of appointment of Office Assistants.

5. In response, the District Revenue Office has filed counter and according to him, suppressing the ban imposed by G.O. Ms.No.666 Finance dated 24.08.1992 in the matter of appointment of Office Assistants, the petitioner had put up Office Notes based on which Rajendran, Anandan and Thangavelu who were working as contingent staff, were appointed by the then Sub-Collector, Pollachi, and hence, disciplinary action was instituted against the petitioner under rule 17(b) of Tamil Nadu Civil Service (Discipline & Appeal) Rules by way of the impugned orders which are perfectly in accordance with law and as such, they do not warrant any sort of interference.

6. Heard Mr. M. Muthupandian, learned counsel appearing for Mr. L.H. Lawrence, learned counsel for the petitioner and Mr. A. Edwin Prabakar, learned Government Advocate for the respondents.

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7. Mr. M. Muthupandian, learned counsel for the petitioner has contended that when the petitioner, as an Assistant, has no authority to appoint Office Assistants, who were in fact appointed by an order of the then Sub-Collector, the impugned orders

alleging that the petitioner had appointed three Office Assistants by preparing Office Notes, suppressing the contents of G.O. Ms. No.666 are bad in law, particularly when the appointing authority, namely, the then Sub-Collector was not proceeded against leading to discrimination in disciplinary proceedings and as such, the impugned orders suffer from infirmity on the ground of discriminative treatment.

8. The second important point of attack made by the counsel for the petitioner is that since the impugned Charge Memos have been issued in the year 2004 for the allegations which pertain to 1995, i.e. after a span of nine long years, the impugned orders have to be quashed on the ground of inordinate delay which has prevented the petitioner to attend the enquiry effectively. Finally, the learned counsel for the petitioner has contended that the two impugned orders do not have legs to stand as they have been framed for the same allegation.

9. On the contrary, Mr. Edwin Prabakar, learned counsel for the respondents, while rebutting the contention of the counsel for the petitioner that the petitioner was not the appointing authority and as such, he cannot be proceeded against, has strenuously contended that the action of the petitioner in putting up Office Notes in connection with appointment of three Office Assistants, suppressing the ban imposed in G.O. Ms.No.666 in appointing Office Assistants, is the cause of action for irregular appointment and in other words, instrumental in the issuance of the impugned orders and hence, the respondents were right in initiating disciplinary action him.

10. In reply to the contention put forth by the counsel for the petitioner that the two impugned orders were passed in respect of same allegation, the learned Government Advocate has argued that the impugned order dated 29.03.2004 pertains to irregular appointment of Rajendran and Anandan whereas the impugned order dated 26.05.2004 relates to irregular appointment made by the petitioner in respect of P. Thangavelu and as such, it cannot be said that the impugned orders have been issued for the same allegation since they relate to appointment of three persons at two different stretches.

11. The main point emerging for consideration is whether the respondents are justifiable in issuing the impugned Charge Memos with a delay of nine years and whether there is any valid justification on their part to do so.

12. Admittedly, the allegations leveled against the petitioner date back to 1995 for which charges were framed against him in the year 2004 with a delay of nine years. For this, there is no justification given on the side of the respondents, much less, a valid justification, except a vague mention in the counter that disciplinary action was initiated against the petitioner and one Somasundaram, Deputy Collector, formerly Personal Assistant to the Sub-Collector, Pollachi vide Charge Memo dated 26.05.2004, which does not contain any reason for the delay.

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13. In regard to the above, the learned counsel for the petitioner has placed reliance on a judgment of the Supreme Court reported in (2005) 6 SCC 636 in the matter of P.V. Mahadevan vs. M.D., Tamil Nadu Housing Board, in which paragraph 11 reads as under:

> "...We are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the office concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellants should not be made to suffer."

14. In the judgment of the Supreme Court referred to above where there was an inordinate delay of 10 years on the part of the Government in initiating disciplinary proceedings against the appellant, the impugned Charge Memo was quashed and this judgment has also been followed by a Division Bench of this Court in its judgment reported in 2005 (5) CTC 380 in the matter of A.Obaidhullah vs. The State of Tamil Nadu represented by the Secretary to Government, Home Department, Secretariat, Chennai - 9 and another.

15. Since the proposition of law laid down by the Supreme Court that there cannot be inordinate delay in initiating disciplinary proceedings, which has also been followed by a Division Bench of this Court as stated above, is squarely applicable to the facts of the case on hand where charges have been framed against the petitioner, nine years after his alleged mis-conduct, this Court holds that the impugned Charge Memos are liable to be quashed as they are hit by inordinate delay.

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Thus, considering the facts and circumstances of the case and the ruling of the Supreme Court followed by a Division Bench of this Court, the writ petitions are allowed without any order as to costs. Consequently, connected W.P.M.Ps. are closed.

cad

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Special Commissioner & Commissioner
   for Revenue Administration
   Ezhilagam
   Chepauk, Chennai - 600 005

2. The District Revenue Officer
   Collectorate
   Coimbatore

+ 1 cc to Mr. M. Muthupandian, Advocate SR No. 26608

common order in
W.P. Nos.22226 and 20998 of 2004

SSV(CO)
SR/26.4.2007

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